



the plaintiff stated, “[i]f I have to pay the \$150.00 filing fee for case 1:04-cv-54-2 and !:04-cv-40-1 with the help of the Lord and my family, so I will not have to proceed in forma pauperis then the 3 strike provision of the 28 U.S.C. § 1915 will not apply, then what will the defendants do then? If this case, I ask the court to notify me in writing and I will pay the total amount and not let the amount be deducted from my prison account.” The defendants interpreted the above quote to mean that the plaintiff stated he had the money to pay the filing fee, therefore his complaint should be dismissed which he could re-file upon payment of the full filing fee. These are the grounds set out in the pending motion to dismiss. In responding to this motion to dismiss the plaintiff explained that if ordered to do so by the court, with the help of the Lord and his family he would get the filing fee paid. Plaintiff also stated in his response to this pending motion that he presently had a negative balance of \$372.96 in his account at the Dougherty County Jail. It must also be noted that when the plaintiff filed his complaint and motion to proceed *in forma pauperis* the records submitted by the Dougherty County Jail showed him to have a negative balance of \$288.58 at that time.

Although the plaintiff must be considered to be a frequent filer who now clearly has three strikes against him, the court can not, under the grounds alleged by defendants, grant the motion to dismiss the complaint. At the time the motion was filed plaintiff had a negative balance of \$288.58 in his jail account. Accordingly the motion to dismiss is hereby **DENIED**.

SO ORDERED, this 25<sup>th</sup> day of August 2005.

/s/ Richard L. Hodge  
RICHARD L. HODGE  
UNITED STATES MAGISTRATE JUDGE